

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FREDERICK WAYNE SMITH,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:22-cv-01580-JLT-SAB (PC)

ORDER VACATING JUNE 13, 2023
ORDER AS RENDERED MOOT

(ECF No. 21)

Plaintiff Frederick Wayne Smith is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

This action proceeds against Defendant Rodriguez for retaliation, deliberate indifference to safety, and denial of access to the courts, and service of process was ordered under the Court's E-Service pilot program. (ECF No. 18.) Pursuant to that order, the service order, summonses, and the operative complaint were served via email on the California Department of Corrections and Rehabilitation ("CDCR").

On April 11, 2023, CDCR filed a Notice of E-Service Waiver indicating that Defendant Rodriguez intended to waive service. (ECF No. 19.)

On May 11, 2023, a waiver of service of process was filed on behalf of Defendant Rodriguez. (ECF No. 20.)

Pursuant to the Court's E-Service Order, "[a] defendant who timely waives service need not serve an answer to the complaint until 60 days after the waiver of service of process was sent."

(ECF No. 17 at 2.) Further, “[f]or any defendant that the CDCR advises will be waiving service, the date the CDCR files its Notice of E-Service Waiver will be considered the date the request for waiver was sent.” (Id.)

Here, as reflected on the waiver of service of process form, it was acknowledged that judgment may be entered if an answer or motion under Rule 12 was not filed within 60 days after April 11, 2023, i.e., June 12, 2023.¹ (ECF No. 20.) Defendant Rodriguez did not file an answer by the June 12, 2023, deadline. Accordingly, on June 13, 2023, the Court issued an order as to why entry of default should not be imposed. (ECF No. 21.)

On June 14, 2023, Defendant Rodriguez filed an answer to the complaint. (ECF No. 22.) Inasmuch as Defendant Rodriguez has filed an answer to the complaint and expressed an intention to defend this action, the Court’s June 13, 2023, is VACATED as rendered MOOT.

IT IS SO ORDERED.

Dated: **June 15, 2023**


UNITED STATES MAGISTRATE JUDGE

¹ The Court notes that the docket entry by defense counsel (not the Court) incorrectly reflects that an answer is due 7/10/2023. (ECF No. 20.)